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THE "TRUST" PROBLEM.

CONGRESS has recently endeavored to frame a law that would adequately control and regulate "trusts." The various plans proposed and the discussions that took place in the House and Senate clearly showed that Congress has not the power to deal with this subject in a thorough and comprehensive manner. A makeshift act has been passed which will throw additional light on the way in which "trusts" are organized and conducted, but will in no wise correct the evils or prevent the abuse of power. And until the federal constitution is amended, giving adequate power to Congress, we must look to the state governments to take up the consideration of this problem and to test the various plans suggested for its solution, so that when the national lawmakers have the authority they may act intelligently and successfully.

A "trust," in the common acceptance of the term as applied to industrial combinations, is a corporation having a large aggregation of capital. A corporate charter is sought after because it enables its owners to exercise many functions impossible to individuals and partnerships. Being a privilege highly prized, it ought not to be given without an adequate consideration being paid for it. Therefore, when the government confers a special privilege, such as a corporate charter, it should require payment in proportion to the value of such privilege.

A corporate privilege is worth to its owners just what it will earn, no more and no less. If this privilege is the means whereby money is made, then the privilege is worth something. If the earning power of this privilege is greater than is the earning power of individual dealers or of partnerships, then it is unfair and unjust to the many to permit the few, through the gift of the government, to outstrip them in the race for wealth. And if the possession of this corporate privilege gives to the few owners the opportunity to make money at the expense of the many, as so many corporations are doing today, the government should step in and, so far as possible equalize the rights of all. This the state can do in but one way — by means of its power of taxation.

That the state has a right to lay a tax as a payment for the

giving of a corporate charter and for protection in the prosecution of corporate business, the courts have repeatedly held. But how shall this tax be laid? Shall it be on the corporate assets, on the corporate stock, on the dividends, on the volume of business, or on the profits? Each plan has been tried, and experience has shown that the only rule which is both just and equitable is the one laid down in the case of *The People vs. The Home Insurance Company* (92 New York Court of Appeals, 341), in which the court said:

It can hardly be denied that the fair measure of the value of the franchises of corporations would be the profits resulting from their use, and in adopting such a rule of estimate no one could justly complain of its being unequal in its effects upon different corporations, or unjust in its general operation.

By adopting such a rule for the taxation of corporations, no distinction need be made between large and small corporations, or between those having a monopoly and those whose business is subject to competition. The only exceptions necessary to be made would be in the case of banking and insurance companies and charitable associations, whose functions are entirely different from those of business and industrial corporations. Barring these exceptions, the following plan should apply to all corporations:

1. There should be established a Corporation Department. This department should possess the sole power to incorporate associations, and should have absolute charge and complete control of its corporate children. It should also possess the power to license foreign corporations to carry on business within the state, and should have control over their operations within its boundaries.

The superintendent or head of this department should be appointed by the governor, to hold office during the term for which the governor is elected. For so important an office great care should be taken that an able, honest, and upright man is selected. If the office were elective, favoritism or corruption in the official would be punished by the election of a new man. No political party or office-holder would necessarily be blamed for the official's downfall. If, however, the office is appointive, not only the appointee, but the governor and his party will be held responsible. The constant change of governors and, as a consequence, of superintendents will secure a powerful check on the extending of favors to corporations.

The business of incorporating and controlling corporations would

be so large that, if a special department was not established, the work could not be done in a thorough and satisfactory manner.

2. Every corporation incorporated under any law of the state should pay an organization tax of one-tenth of 1 per cent. upon the amount of capital stock authorized, and a like tax upon any subsequent issue. Every foreign corporation should pay a license fee of one-tenth of 1 per cent. for the privilege of exercising its corporate franchise or carrying on its business in such corporate capacity in the state, to be computed upon the basis of the capital employed by it within the state during the first year of business.

The average organization tax and the average license fee on foreign corporations in the various states are about one-tenth of 1 per cent. Experience has shown that this is the rate which incorporators are willing to pay for the privilege of owning a corporate charter and of exercising corporate privileges in the state, and the amount the state should charge for giving such privilege.

The incorporation tax should be so low as to deter no group of men from carrying on business in a corporate capacity; for it is to corporations, with their large aggregation of capital, that we must look for the development of our country. Corporations, when backed by large capital, expert skill, and great business ability, have often conferred material benefit on the community at large, and almost invariably insured the promotion of prosperity on a durable basis. They have furnished the people with many of the commodities of civilized existence at much lower prices than formerly, not only without decreasing the wages of labor, but in many instances increasing them and eventually extending the field for a larger number of employees. Sugar, india-rubber goods, tobacco, leather, and a great variety of other commodities are cheaper than at any former period of our country's existence; and wages are higher today than they have ever been before except in war times.

Without corporations our manufacturers could not compete with those of England, France, and Germany in the race for the Asiatic and the South American markets. To extend our markets, and thereby provide an outlet for our surplus products, is the crying necessity of our economic life; and in order to obtain these markets, giant corporations must be met and conquered by more powerful and far greater aggregations of capital, organized in the form of corporations.

3. The real and personal property owned by corporations should be locally assessed and taxed in the civic divisions in which the property is located, the same as the real and personal property owned by individuals.

The reason for such local taxation is twofold: first, the local authorities have a better knowledge of the value of the property, and better facilities for obtaining this knowledge, and would, therefore, make fewer mistakes, than a board of examiners composed of residents from different parts of the state; secondly, the cities and counties depend largely for their support upon the taxes levied upon the property of corporations located within their jurisdiction, and to withdraw this revenue would cause confusion and would increase the burdens of the local taxpayer. If such local property taxes were abolished, corporations probably would be organized to hold real and personal property for individuals, thus depriving the local governments of a large part of their revenue.

4. Every prospectus or advertisement issued or published with the view of obtaining subscriptions for shares or for bonds of a corporation, organized or to be organized, should give full details as to its organization; the contracts into which the promoters or organizers have entered; the earnings for the two previous years of all underlying corporations; the amount of money to be used for preliminary expenses and the amount to be reserved for working capital; and all information necessary for safe and intelligent investment. For a false statement, or the issuing of a prospectus which does not make a full disclosure of the corporate affairs, the promoters and their associates, the officers and their agents, should be legally liable, both civilly and criminally.

This knowledge is at present inaccessible. The investor who puts money into a "trust" must guess as best he can what property he is getting; and the guess is often a bad one for him. The making public of the above-mentioned facts will remove the gravest evils from stock-watering. If the investor knows that there is only one dollar of property back of every three dollars of stock and bonds, which is the case with so many corporations whose shares are listed on the exchanges today, he can buy the securities at a discount sufficient to make his investment safe.

5. The superintendent or head of the Corporation Department, through his staff of examiners, should examine annually into the affairs of all corporations organized in the state, inspecting their

books, agreements, receipts, expenditures, vouchers, records of meetings of directors and of stockholders, and report the condition of their affairs on the first of January of each year. Power should be given him to compel the attendance of witnesses to be examined under oath, and to call experts to testify as to values. And if it should be found that a corporation is overcapitalized, or is violating any of the laws of the state or of the United States, the superintendent of the Corporation Department, after giving sixty days' written notice to comply with the laws should place the evidence in the hands of the attorney-general, who should immediately commence an action to annul its charter.

All foreign corporations doing business within the state should be examined annually by the superintendent of this department, to ascertain the amount of capital employed within the state, and whether or not the corporation is obeying the laws.

A detailed report of the examination of the property, business, profits, and losses of every domestic corporation should be made each year and kept on file in the office of the superintendent. A summary statement of the corporate assets and liabilities, the amount of stock issued and the amount paid thereon, in cash and otherwise, the actual amount of surplus, and the nature and mode in which it is used and invested, should be published in the state paper, and in one newspaper published in the county where the principal place of business of such corporation is located.

The first concern of a government which grants charters of incorporation ought to be to see that its corporate offsprings are doing a legitimate business and are not violating any of the laws. Its second concern ought to be the giving to the public of all such information as should affect the reasonable judgment of a man in determining whether he should or should not invest in a particular concern.

These obligations on the part of the government are universally recognized, but the means to be employed to effect these ends are still a matter of keen discussion. It has frequently been urged that the affairs of corporations should be as an open book to be read by whomsoever desires. Would it be fair to the stockholders of a corporation to let its partnership competitors, whose business methods, profits, and losses are a secret, look over its books, ascertain the buying and selling price of its commodities, its profits and its losses, and by means of such information regulate their business

accordingly? Would it be fair to the members of a corporation to open its books to its creditors, to the banks with which it does business, and to its employees? A corporation, just as a partnership or an individual in business, in some years makes money, in some loses money, and in others comes out even; but in the average comes out ahead. If the creditors found at the end of a year that a corporation had lost money, how long would it be before the credit of that corporation would be lost; how long before the banks would refuse to renew or to discount its paper; how long before the creditors would place their claims in judgment and force the corporation into a receivership or into bankruptcy? Entire publicity would mean the paralysis, if not the destruction, of the business done by corporations. But, say the advocates of this remedy, we intend to apply the publicity act only to the so-called "trusts." Where would the line of distinction be drawn? If at the amount of the capital stock, would it not deter corporations from extending their business beyond that determined amount, thereby crippling their usefulness to the community? If at the method of their organization (corporations formed by the uniting of corporations, partnerships, and individuals, and corporations not formed by the merging process), would not the effect of the act be defeated by the corporation buying one plant after another, instead of combining in the first instance? The result would be the same and the act would become a dead letter. There are no external characteristics distinguishing corporations pursuing monopolistic tendencies from those not so engaged. No one has yet presented a feasible plan to classify corporations so as not to work injury to the corporate stock and bondholders in applying the remedy of entire publicity.

Experience has abundantly proved that it is not practicable to allow corporations to issue their own reports. Such a plan has been tried by the various states, and the result has been that the reports, if not so meager as to be of no practical value, are of so complex a nature that the majority of persons are incapable of understanding or properly appreciating them. As a matter of fact, a state board of examiners is absolutely indispensable for the realization of compulsory publicity.

If the so-called "Tobacco," "Leather," "Whisky," "Ice," "Sugar," "Steel," and "Shipbuilding" Trusts had been subjected to the ordeal of a thorough investigation by expert accountants and their true financial condition laid before the public, a large number

of serious losses would have been prevented from falling upon innocent and worthy people. The fact that industrials are possessed of double attributes, of public and private nature combined, opens the way to abuse of official power. The favored few in the inner confidence of the managers have advantages in the general market to which they are not justly entitled. If a corporation is legally organized and is conducting a legitimate business, no injury will be done it by inspection.

6. A progressive graded tax should be levied on the actual net profits of corporations above 6 per cent. Such tax might be graded as follows:

- 1-10 of the 1st per cent. above 6 per cent.
- 1- 9 of the 2d per cent. above 6 per cent.
- 1- 8 of the 3d per cent. above 6 per cent.
- 1- 7 of the 4th per cent. above 6 per cent.
- 1- 6 of the 5th per cent. above 6 per cent.
- 1- 5 of the 6th per cent. above 6 per cent.
- 1- 4 of the 7th per cent. above 6 per cent.
- 1- 3 of the 8th per cent. above 6 per cent.
- 1- 2 of the 9th per cent. above 6 per cent.
- 6-10 of the 10th per cent. above 6 per cent.
- 7-10 of the 11th per cent. above 6 per cent.
- 8-10 of the 12th per cent. above 6 per cent.

9-10 of each per cent. of profits above 18 per cent.

Each corporation is rated according to the profits made. The corporate charter is valued exclusively by the prosperity of the corporation. A tax upon the profits would be governed by actual results and be equal in its effect upon different corporations, and be just in its general operation. Whether or not a corporation had a special privilege, in the nature of a monopoly given by the patent laws, by the tariff, or by the control of the market, would make no difference in the laying of the tax. If a corporation possessed any of these privileges, it would be obliged to pay for each in proportion to its value, as evidenced by its earning power. A corporation should be permitted to earn a reasonable profit on its assets. If this permission were taken away, all incentive to carry on business would be killed, the affairs of corporations would be wound up, and the state would be compelled to face the condition of having 90 per cent. of its factories closed, thousands of workingmen thrown out of employment, and its people made dependent upon other states for the necessities and luxuries of life. That the percentage of profits allowed untaxed should be liberal, no one would question. While 4 per cent. may be the average value of capital, we would suggest

the allowance untaxed of 6 per cent. of actual net profits on the fair market value of the tangible assets of the corporation, as this percentage would be large enough to stimulate business and not so large as to work injustice between corporations and individual dealers. We do not mean merely the allowance untaxed of 6 per cent. of profits from the date of the enactment into law of this proposed plan, but an allowance untaxed of 6 per cent. of profits on the actual tangible assets of the corporation for each and every year of its existence. Most corporations make no profits and declare no dividends for some years after their incorporation; and to tax them when they are beginning to make money, without taking into consideration the years when the stockholders' money was earning nothing, would be unfair, unjust, and inequitable. A corporate charter is worth practically nothing unless brains and money are expended to establish it on a paying basis in the business world. The value of a corporate charter represents the privilege *plus* the brains and the money used to develop it. And the brains and the money expended should be taken into account when a tax is levied on the profits earned by or through this privilege.

It is reasonable to assume that corporations will make all the profits they dare; and if we place a progressive graded tax upon their profits, their incentive to overcharge and increase their profits beyond a fair amount will be gone, and their time, thought, and energy will be taken from their calculations as to how much profit they dare to make, to be bestowed in bettering the quality of their products, in extending their markets, and in holding their place in the business world. Franchises, special privileges, and tariff protection will not produce the valuable monopolies they are doing today, for upon the adoption of this plan of taxation the monopolies will not be allowed to yield the large profits that are now enjoyed. If a corporation has to pay as a tax nine-tenths of each per cent. of profits above 18 per cent., it will not risk the losing of its trade for the sake of making so small a percentage of profit, and the people will get the benefit of a cheaper price and a better article.

7. In determining the actual net profits earned by a corporation, the Board of Examiners should ascertain annually the fair market value of the tangible assets of the corporation, not taking into consideration the franchise, the capital stock, or its bonds.

This value may be obtained by an examination of the officers, by inspection of the books of the corporation, and by expert testimony.

The board should deduct from the total earnings of the corporation the necessary and reasonable expenses of management, including the actual amounts spent in renewing the plant, the cost of materials purchased and used, and, in order to avoid double taxation, the taxes paid on its property, business, or profits to all municipalities. Having obtained these amounts, the board should by ordinary business methods figure the percentage of profits earned in relation to its corporate assets.

8. Every ten years the Board of Examiners should ascertain the fixed average of profits earned by each corporation for that period. If the average of net profits does not exceed 6 per cent. per annum, the state should refund to the corporation such moneys received during such period as a tax on its profits above 6 per cent., or so much thereof as to make the average of profits untaxed equal to 6 per cent. ; thus allowing untaxed to every corporation an average of 6 per cent. profit on its tangible assets during the period of its existence.

9. A tax should be levied on all foreign corporations doing business in the state, upon the capital employed within the state.

If the tax imposed should be one-half of 1 per cent. on the basis of the capital so employed, it would about equal the tax upon 10 per cent. of profits earned by the domestic corporation, based upon the foregoing table. A rate of taxation should be adopted to make the foreign corporation pay the same proportion of tax that is levied on the domestic corporation, so as not to drive the domestic corporation to wind up its affairs and incorporate in another state and come back and do business in its old market.

The following checks on such practice may be provided :

a) The state might prohibit foreign corporations from doing business in the state until duly licensed by the Corporation Department.

b) The state might refuse to permit an unlicensed foreign corporation to maintain any action in the state upon any contract made by it in the state.

The difficulty in equalizing the tax upon foreign and domestic corporations is one of the strongest arguments in favor of a federal incorporation act. But the strongest argument of all is that the secret rebates given by railroads and common carriers, which foster favorites and crush out competitors, cannot be prevented by any law that has been or that can be enacted by the federal government or the various state legislatures along the lines of the Inter-State Com-

merce Act. Secrecy is the railroads' safeguard, and the number of states in which they operate is their protection.

The control of corporations will never be complete, railroad rebates and discriminations will never cease to be given, justice and fairness will never be accorded equally to the stockholders of corporations, and the general public will never be entirely freed from corporate greed and corporate oppression, until an amendment to the United States constitution is adopted empowering Congress to pass a general incorporation law based on the ideas hereinbefore set forth, and establishing a central department under the government of the United States.

10. The cost of running the Corporation Department should be met in two ways: (a) by the incorporation tax; (b) by charging the various corporations examined an amount sufficient to pay the salaries and the expenses of the corporate examiners. The amount charged would only be about ten dollars a day for the time spent by the examiner in investigating the affairs of a corporation. If the corporation had to pay for such examination, it would likely have its books kept in a simple and straightforward manner, so that the examiner could obtain his report in a short time.

The incorporation tax should more than suffice for the expenses of the department, if the department was conducted on economical lines; while the amount collected as a tax on profits could go to reduce the general expenses of the state government.

HARRY EARL MONTGOMERY.

BUFFALO, N. Y.